

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21959
Docket Number CL-22164

George S. Roukis, Referee

(Brotherhood of **Railway, Airline and**
(**Steamship Clerks, Freight Handlers,**
(**Express and Station Employes**
PARTIES TO DISPUTE: (**(Elgin, Joliet and Eastern Railway Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
GL-8451, **that:**

1. The Carrier violated the effective Clerks' Agreement when following **an investigation and hearing** at which he **was unable to be present** through no **fault of his own**, it discharged Clerk K. C. **Douglas** from service effective **June 14, 1976**.

2. The Carrier shall now reinstate Mr. Douglas to its service with his seniority and all other rights unimpaired, **and shall compensate him** for **all time lost** as result of this improper discharge, and **shall pay an additional amount** as interest equal to six per cent **(6%)** per annum, and **shall clear his record** of the charges **placed against him** by the **Carrier**.

OPINION OF BOARD: The **Board has carefully** reviewed the record. The **pivotal question** before us is whether or not Carrier's certified **letter of June 3, 1976** reasonably **comported** with the **bona fides** of constructive delivery.

We are certainly mindful that claimant's physical condition would **unarguably warrant a postponement** of the **June 2, 1976 hearing** upon proper **application** which in fact did occur when the local BRAC Chairman requested a change in date because of claimant's hospital-
ization.

Carrier accommodated this request by first acknowledging same over the telephone on June 2, 1976 and then following it up with a **formal certified letter (supra)**. After focusing critically on the fact patterns attendant to these events, we think that the evidence presented falls short of **that quantum of proof** that would reasonably show that the Claimant's particular **circumstances** at that **moment** estopped **him** from receiving the aforesaid **communication**. Third Division case law on the essentials of acceptable "constructive delivery" is on point with our

assessment. Furthermore, while we are **mindful** of claimant's asserted medical condition, he offered no official proof from responsible hospital administrative authorities **certifying** that his **ailment** necessitated absolute institutional confinement during this **time.**

Accordingly, since we have found that the June **3,1976** certified letter was consistent with our standards of constructive delivery, we **will review** the merits, **of the June 9,1976,** investigative proceeding. We find no reason to disturb the discipline assessed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and **the Employees involved in this** dispute are respectively Carrier and **Employees** within the meaning of the Railway **Labor Act,** as approved June 21, **1934;**

That this Division of the Adjustment Board has jurisdiction **over** the dispute involved herein; and

The Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.